

Rebecca Davis (SBN 271662)  
rebecca@lozeaudrury.com

**LOZEAU DRURY LLP**  
1939 Harrison St., Suite 150  
Oakland, CA 94612  
Telephone: (510) 836-4200  
Facsimile: (510) 836-4205

Patrick H. Peluso\*  
ppeluso@woodrowpeluso.com  
Steven L. Woodrow\*  
swoodrow@woodrowpeluso.com  
Taylor T. Smith\*  
tsmith@woodrowpeluso.com  
**WOODROW & PELUSO, LLC**  
3900 East Mexico Avenue, Suite 300  
Denver, Colorado 80210  
Telephone: (720) 213-0675  
Facsimile: (303) 927-0809

*\*Pro Hac Vice*

Attorneys for Plaintiff and the Class

**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

**Loretta Williams**, individually and on behalf  
of all others similarly situated,

Plaintiff,

v.

**DDR Media, LLC**, a Pennsylvania limited  
liability company, **d/b/a Royal Marketing  
Group**, and **Lead Intelligence, Inc.**, a  
Delaware corporation, **d/b/a Jornaya**,

Defendants.

Case No. 3:22-cv-03789-SI

**SECOND AMENDED CLASS ACTION  
COMPLAINT**

**JURY TRIAL DEMANDED**

1. Plaintiff Loretta Williams (“Plaintiff” or “Williams”) brings this Second Amended Class Action Complaint and Jury Demand (“Complaint”) against Defendants DDR Media, LLC d/b/a Royal Marketing Group (“DDR Media”) and Lead Intelligence, Inc. d/b/a Jornaya (“Jornaya”, and collectively with DDR Media, “Defendants”) to obtain redress for, and to put an end to, Defendants’ serial wiretapping of the electronic communications of visitors to DDR

Media’s websites, including snappyrent2own.com.

2. The wiretaps are embedded in the computer code on DDR Media’s websites and are used by Defendants to covertly observe and record visitors’ keystrokes and clicks in real time.

3. Such actions violated the California Invasion of Privacy Act, Cal. Penal Code 631 (“CIPA”), and invaded Plaintiff’s and class members’ privacy rights.

4. Plaintiff, for her Complaint, alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.

### NATURE OF THE ACTION

5. Defendant Jornaya offers a product to lead generators and telemarketers known as “TCPA Guardian”. This product is designed to allow these lead generators and telemarketers to attempt compliance with the federal Telephone Consumer Protection Act by documenting alleged evidence of prior express consent to receive telemarketing calls provided on websites.

6. One feature of Jornaya’s “TCPA Guardian” product is a “visual playback” function, which records, in real time, a person’s interaction with a website that is using TCPA Guardian.

7. As Jornaya states on its “Guardian TCPA Reports,” “Jornaya provides a neutral, 3rd party technology-based platform that tracks the origin and history of a lead event and the consumer actions that occurred at that event. Jornaya’s technology witnesses more than one hundred million lead events each month - tracking the actions that occur when a consumer fills out a lead form.” See “Plaintiff’s Guardian Report,” attached hereto as Exhibit A.

8. Jornaya enters into partnerships with various telemarketers and lead generators who wish to utilize TCPA Guardian. Jornaya then provides its software and scripts to those partners.

9. One such entity is DDR Media, which uses TCPA Guardian on its website scrappyrent2own.com, along with other websites that it operates.

10. DDR Media knows that TCPA Guardian captures strokes, clicks, and other interactions on its websites—it is a primary reason why DDR Media contracts with Jornaya for the TCPA Guardian product in the first place.

11. Pursuant to their agreement with each other, DDR Media installed TCPA Guardian

1 by embedding Jornaya's code onto scrappyrent2own.com and, on information and belief, many of  
2 DDR Media's other lead generation websites.

3 12. Unfortunately for Defendants, their conduct constitutes wiretapping under  
4 California law because Defendants do not secure prior express consent before recording their  
5 movements on the websites.

6 13. As a result of Defendants' violations of the CIPA, Plaintiff Williams and the  
7 members of the Class were deprived of their privacy rights guaranteed to them by California law,  
8 and they are thus entitled to injunctive relief and statutory damages in the amount of \$5,000 for  
9 each violation. *See* Cal. Penal Code § 637.2.

## 10 PARTIES

11 14. Plaintiff Williams is a natural person and citizen of the State of California.

12 15. Defendant DDR Media is a Pennsylvania limited liability company with its  
13 principal place of business located in Harrisburg, Pennsylvania.

14 16. Defendant Jornaya is a Delaware corporation with its principal places of business  
15 located in Conshohocken, PA.

## 16 JURISDICTION AND VENUE

17 17. This Court has subject matter jurisdiction under the Class Action Fairness Act, 28  
18 U.S.C. § 1332(d), *et seq.* ("CAFA"), because the class consists of over 100 people, at least one  
19 member of each class is from a State other than the state of the Defendants, and the amounts in  
20 controversy are over \$5,000,000. Further, none of the exceptions to CAFA jurisdiction apply.

21 18. This Court has personal jurisdiction over Defendants because they conduct  
22 substantial business in this District, the unlawful conduct alleged in the Complaint occurred in  
23 and/or was directed to this District, and Plaintiff's claims arise out of each Defendants' forum-  
24 related activities.

25 19. Venue is proper in this District under 28 U.S.C. § 1391 because a substantial part of  
26 the events and omissions giving rise to the claims occurred in this District.

## 27 FACTS SPECIFIC TO PLAINTIFF

28 20. On or around December 10, 2021, Williams visited scrappyrent2own.com, a

1 website owned and operated by DDR Media.

2 21. During that visit, the Jornaya TCPA Guardian replay function created a video that  
3 captured Williams' keystrokes and clicks on the website. It also captured the date and time of the  
4 visit, her IP address, and her geographic location.

5 22. Jornaya also recorded Williams's name, address, and phone number.

6 23. Simply stated, Williams's interaction (including her keystrokes and mouse  
7 movement and clicks) was recorded by DDR Media and Jornaya using Jornaya's "TCPA  
8 Guardian" technology.

9 24. This recording was done without Plaintiff's consent. Defendants did not inform  
10 website visitors that their strokes and clicks would be recorded, much less secure prior express  
11 consent. Indeed, the wiretapping began the moment Williams and other members of the alleged  
12 Class visited the webpage.

13 25. All TCPA Guardian videos are hosted on Jornaya's servers, and to access the videos  
14 one must follow a hyperlink provided by Jornaya. Moreover, Jornaya independently collects and  
15 stores information provided by web users on the websites of its clients.

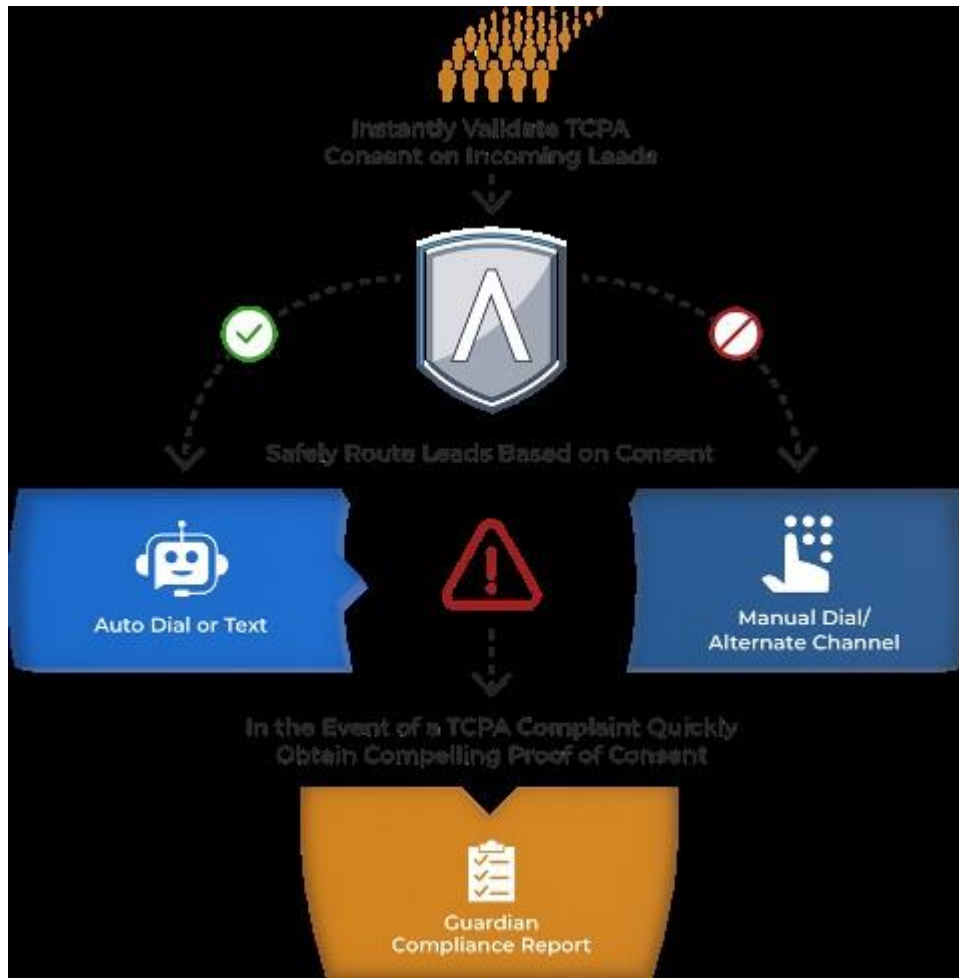
16 26. Members of the alleged Class were unlawfully monitored in the same way as  
17 Williams was: Jornaya's software functions the exact same way no matter which person is visiting  
18 a site, or which of DDR Media's websites the person is visiting.

19 27. Jornaya explains its process, in part, as follows:

20 Jornaya provides a neutral, 3rd party technology-based platform that tracks the origin  
21 and history of a lead event and the consumer actions that occurred at that event.  
22 Jornaya's technology witnesses more than one hundred million lead events each  
23 month - tracking the actions that occur when a consumer fills out a lead form - or  
24 interacts with a call center representative to complete a lead form. Jornaya's Guardian  
services document the specific disclosure that was present on a lead form during a  
lead event and what type of consent was obtained, if any. Guardian services are  
intended solely and exclusively to provide companies with factual information about  
the environment that the consumer experienced.

25 (*See Ex. A.*)

26 28. Jornaya also provides the following diagram on its website:  
27  
28



<https://marketing.verisk.com/docs/tcpa-guardian> (Last visited September 20, 2023.)

29. Additionally, Jornaya admits on its website that it stores consumers' interactions internally. That is, one of Jornaya's customers, such as DDR Media, doesn't receive automatic access to visual playbacks and related data. Rather, if a Jornaya customer such as DDR wishes to receive the playback, it has to affirmatively request it from Jornaya via Jornaya's portal. Such requests may take a day or more for Jornaya to fulfill. But the customer cannot simply retrieve it—it must request it, and then Jornaya goes back through its retained data and fulfills the request.

<https://marketing.verisk.com/docs/getting-started-with-tcpa-guardian>. (Last visited September 20, 2023).

30. All of this is to say that Jornaya doesn't merely "record the communication for retrieval by a party to the same communication." First of all, again, the "retrieval" must be requested from Jornaya and can take Jornaya at least a day or more to fulfill while it retrieves the

1 data it has read and learned and creates the playback. But more broadly, Jornaya actively reads or  
2 learns (or attempts to read or learn) the contents or meaning of the communications at issue. It also  
3 analyzes the communications at issue. Jornaya's TCPA Guardian cannot work any other way. It  
4 **must** read and learn the content of the communications (or at least attempt to do so) in order to  
5 function. In order to "route leads based on consent," as its diagram discusses, it must read and/or  
6 learn (or at least attempt to read or learn) the contents of the communication. In order to retrieve  
7 stored data and create a visual playback, it must read and learn the contents of the communication.  
8 In order to, as Jornaya puts it, "track[] the origin and history of a lead event and the consumer  
9 actions that occurred at that event" it must naturally read or learn the contents of the  
10 communication. It could not track the history of an event without learning that history.

11 31. Additionally, Jornaya provides its subscribers, such as DDR Media, what it calls  
12 "TCPA Compliance Adoption Reports". These reports "show key data points that support the  
13 success of your compliance program. It is a weekly view of authentic LeadiD tokens,  
14 organized by Provider, showing the overall volume of leads that are meeting the  
15 minimum requirements to implement an effective TCPA Program. This detail will help  
16 you monitor and evaluate your provider's TCPA Guardian implementations."  
17 <https://marketing.verisk.com/docs/tcpa-adoption-report-guide>. (Last visited September  
18 20, 2023.)

19 32. The TCPA Compliance Adoption Reports report back on various data  
20 points, including (1) "Lead Type," which "Indicates whether this lead was generated on  
21 a web form or via a call center", (2) "Audits," which indicate "The number of authentic  
22 LeadiDs on which you performed an audit, and Jornaya was able to evaluate the TCPA  
23 Compliance presence on the form," (3) "Disclosure & Match", which is "The percentage  
24 of leads where the disclosure language on the form was an exact match to one of the  
25 approved disclosure languages in your Jornaya Intelligence Profile," and (4)  
26 "Disclosure # without Labels," which is "the Count of leads that did not have the TCPA  
27 disclosure labels implemented". (*See Id.*) To provide these Adoption Reports, Jornaya  
28 must have read and learned the content of the communications at issue, or at least

1 attempted to do so.

2 33. Moreover, Jornaya ascribes “red flags,” “green flags,” and “yellow flags”  
3 to leads depending on the quality of the leads. <https://marketing.verisk.com/docs/tcpa-kpi->  
4 dashboard. (Last visited September 20, 2023). In order to provide such a “flagging” feature,  
5 Jornaya must read and learn the content of the communications at issue in order to determine  
6 which color flag to give.

7 34. Jornaya also offers its customers such as DDR Media “Real-Time Decisions  
8 solutions” as part of TCPA Guardian. This feature allows customers to, in real time, review third-  
9 party leads and “verify the consumer-provided TCPA consent on the original web form,” “know  
10 the origin and history of the lead along with characteristics that call out lead quality and conversion  
11 potential,” and “confirm and supplement consumer-provided data on the lead form.”  
12 <https://marketing.verisk.com/docs/real-time-decisions>. To offer these features, Jornaya must read  
13 and learn the content of the communications at issue, or at least attempt to do so.

14 35. For wiretapping her visit to DDR Media’s website, Plaintiff brings this suit, on  
15 behalf of herself and those similarly situated, to put an end to Defendants’ repeated and widespread  
16 CIPA violations. Such violations entitle her, and other similarly situated persons, to injunctive  
17 relief plus statutory damages of \$5,000 per violation.

#### 18 **CLASS ACTION ALLEGATIONS**

19 36. Plaintiff brings this action pursuant to Federal Rule of Civil Procedure Rules  
20 23(b)(2) and 23(b)(3) on behalf of herself and a Class defined as follows:

21 All persons in California who: (1) from a date one year prior to the filing of the  
22 initial complaint in this action to the date notice is sent to the Class; (2) visited one  
23 of DDR Media’s websites; (3) which utilized Jornaya’s “TCPA Guardian” or  
24 similar Jornaya software; (4) who had their electronic communications intercepted  
25 and/or recorded by Jornaya; and (5) where the Defendants claim to have secured  
26 prior express consent to monitor, record, collect, and store electronic  
27 communications in the same manner as they claim to have secured prior express  
28 consent from Williams, or where Defendants do not claim they secured any such  
prior express consent.

37. Excluded from the Class are: (1) Defendants, Defendants’ agents, subsidiaries,  
parents, successors, predecessors, and any entity in which Defendants or their parents have a



controlling interest, and those entities' officers and directors, (2) the Judge or Magistrate Judge to whom this case is assigned and the Judge's or Magistrate Judge's immediate family, (3) Plaintiff's counsel and Defendants' counsel; (4) persons who execute and file a timely request for exclusion, (5) persons who have had their claims in this matter finally adjudicated and/or otherwise released, and (6) the legal representatives, successors, and assigns of any such excluded person. Plaintiff anticipates the need to amend the class definition following a reasonable period for discovery regarding the contours of the Class.

38. **Numerosity:** The exact number of class members is unknown to Plaintiff at this time, but it is clear that individual joinder is impracticable. On information and belief, Defendants wiretapped thousands of California residents. Further, the class members can readily be ascertained through Defendants' records.

39. **Commonality:** Common questions of law and fact exist as to all members of the Class for which this proceeding will provide common answers in a single stroke based upon common evidence, including:

- (a) Whether Defendants' conduct described herein violated the CIPA;
- (b) Whether Defendants secured prior express consent before monitoring, recording, collecting, and storing the electronic communications of Plaintiff and the Class;
- (c) Whether Defendants have violated the California Constitution; and
- (d) The proper measure of damages.

40. **Typicality:** As a result of Defendants' uniform and repeated pattern of unlawful recording, Plaintiff and the class members suffered the same injury and similar damages. If Defendants' actions violated the CIPA as to Plaintiff, then they violated the CIPA as to all class members. Thus, Plaintiff's claims are typical of the claims of the other class members.

41. **Adequate Representation:** Plaintiff is a member of the Class and both she and her counsel will fairly and adequately represent and protect the interests of the Class, as neither has interests adverse to those of the class members and Defendants have no defenses unique to Plaintiff. In addition, Plaintiff has retained counsel competent and experienced in complex litigation and class actions. Further, Plaintiff and her counsel are committed to vigorously



1 prosecuting this action on behalf of the members of the Class, and they have the financial resources  
2 to do so.

3 42. **Conduct Applicable Towards Class as a Whole:** Defendants acted consistently  
4 with respect to every member of the Class. No Class Member was treated specially or different as  
5 Defendants acted in the same manner with respect to all Class Members. As such, injunctive relief  
6 and corresponding declaratory relief are available and appropriate.

7 43. **Predominance:** The common questions of law and fact set forth above go to the  
8 very heart of the controversy and predominate over any supposed individualized questions.  
9 Irrespective of any given class member's situation, the answer to whether Defendants' conduct  
10 described herein repeatedly violated the CIPA is the same for everyone—a resounding “yes”—and  
11 the same will be proven using common evidence.

12 44. **Superiority and Manageability:** A class action is superior to all other methods of  
13 adjudicating the controversy. Joinder of all class members is impractical, and the damages suffered  
14 by/available to the individual class members will likely be small relative to the cost associated with  
15 prosecuting an action. Thus, the expense of litigating an individual action will likely prohibit the  
16 class members from obtaining effective relief for Defendants' misconduct. In addition, there are  
17 numerous common factual and legal questions that could result in inconsistent verdicts should  
18 there be several successive trials. In contrast, a class action will present far fewer management  
19 difficulties, as it will increase efficiency and decrease expense. Further, class-wide adjudication  
20 will also ensure a uniform decision for the class members.

21 **FIRST CAUSE OF ACTION**  
22 **Violation of Cal. Penal Code § 631, *et seq.***  
**(On Behalf of Plaintiff and the Class)**

23 45. Plaintiff incorporates by reference the foregoing allegations as if fully set forth  
24 herein.

25 46. The CIPA provides that it is a violation of Cal. Penal Code § 631(a) for a defendant,  
26 “by means of any machine, instrument, contrivance, or in any other matter,” to do any of the  
27 following:  
28

1 Intentionally tap[], or make[] any unauthorized connection, whether physically,  
2 electrically, acoustically, inductively or otherwise, with any telegraph or telephone  
3 wire, line, cable, or instrument, including the wire, line, cable, or instrument of any  
4 internal telephonic communication system,

5 Or

6 Willfully and without the consent of all parties to the communication, or in any  
7 unauthorized manner, read[] or attempt[] to read or learn the contents or meaning  
8 of any message, report, or communication while the same is in transit or passing  
9 over any wire, line or cable or is being sent from or received at any place within  
10 this state,

11 Or

12 Use[], or attempt[] to use, in any manner, or for any purpose, or to communicate in  
13 any way, any information so obtained,

14 Or

15 Aid[], agree[] with, employ[], or conspire[] with any person or persons to  
16 unlawfully do, or permit or cause to be done any of the acts or things mentioned  
17 above in this section.

18 47. Section 631(a) is not limited to phone lines. *See Matera v. Google Inc.*, 2016 WL  
19 8200619, at \*21(N.D. Cal. Aug. 12, 2016) (CIPA applies to “new technologies” and must be  
20 construed broadly to effectuate its remedial purpose of protecting privacy); *Bradley v. Google,*  
21 *Inc.*, 2006 WL 3798134, at \*5-6 (N.D. Cal. Dec. 22, 2006) (CIPA governs “electronic  
22 communications”); *In re Facebook, Inc. Internet Tracking Litigation*, --- F.3d --- 2020 WL  
23 1807978 (9th Cir. Apr. 9, 2020) (reversing dismissal of CIPA and common law privacy claims  
24 based on Facebook’s collection of consumers’ Internet browsing history).

25 48. Jornaya’s TCPA Guardian software is a “machine, instrument, contrivance, or . . .  
26 any other manner” that is used by Jornaya and DDR Media to engage in the unlawful practices  
27 described in this Complaint.

28 49. By using Jornaya’s eavesdropping software, Defendants intentionally tapped the  
lines of communication between Plaintiff (and absent Class Members) and DDR Media’s websites.

50. Defendants lack prior express consent from Plaintiff and the Class for Defendants to  
“read or attempt to read or learn the contents or meaning” of their electronic communications being

1 made in the State of California.

2 51. At all relevant times, by using TCPA Guardian, Jornaya willfully and without the  
3 consent of all parties to the communication, or in any unauthorized manner, read or attempted to  
4 read or learn the contents or meaning of electronic communications of Plaintiff and alleged Class  
5 Members, while the electronic communications were in transit or passing over any wire, line or  
6 cable or were being sent from or received at any place within California.

7 52. DDR Media partnered with (and conspired with) Jornaya to achieve the unlawful  
8 conduct described herein.

9 53. This violation of Section 631(a) is an invasion of privacy and confers Article III  
10 standing.

11 54. Absent an injunction, Plaintiff and the members of the alleged Class are at risk of  
12 continued harm. Jornaya's software is used by many website operators and there is no practical  
13 way to know if the future whether website communications will be monitored and recorded by  
14 Defendants, absent ceasing to utilize the internet (a near impossibility in the year 2022).

15 55. Accordingly, pursuant to Cal. Penal Code § 637.2(a)(1), Plaintiff and the Class seek  
16 injunctive relief and statutory damages in the amount of \$5,000 per violation.

17 **PRAYER FOR RELIEF**

18 WHEREFORE, Plaintiff, individually and on behalf of the Class, respectfully requests that  
19 this Court issue an order:

- 20 A. Certifying this case as a class action on behalf of the Class defined above,  
21 appointing Williams as class representative and appointing her counsel as class  
22 counsel;
- 23 B. Finding that Defendants' actions constitute repeated and willful violations of the  
24 CIPA;
- 25 C. Awarding injunctive relief under the CIPA enjoining Defendants from continuing to  
26 violate the CIPA by unlawfully wiretapping electronic communication without  
27 consent;
- 28 D. Awarding damages, including statutory damages where applicable, to Plaintiff and

the Class in amounts to be determined at trial;

E. Awarding Plaintiff and the Class their reasonable litigation expenses and attorneys' fees;

F. Awarding Plaintiff and the Class pre- and post- judgment interest, to the extent allowable; and

G. Such further and other relief as the Court deems reasonable and just.

### **JURY DEMAND**

Plaintiff requests a trial by jury of all claims that can be so tried.

Respectfully submitted,

Dated: September 20, 2023

**LORETTA WILLIAMS**, individually and on behalf  
of all others similarly situated,

By: /s/ Patrick H. Peluso  
One of Plaintiff's Attorneys

Rebecca Davis (SBN 271662)  
rebecca@lozeaudrury.com  
**LOZEAU DRURY LLP**  
1939 Harrison St., Suite 150  
Oakland, CA 94612  
Telephone: (510) 836-4200  
Facsimile: (510) 836-4205

Patrick H. Peluso\*  
ppeluso@woodrowpeluso.com  
Steven L. Woodrow\*  
swoodrow@woodrowpeluso.com  
Taylor T. Smith\*  
tsmith@woodrowpeluso.com  
**WOODROW & PELUSO, LLC**  
3900 East Mexico Avenue, Suite 300  
Denver, Colorado 80210  
Telephone: (720) 213-0675  
Facsimile: (303) 927-0809

*\*Pro Hac Vice*

*Counsel for Plaintiff and the Class*